

The Honorable Ronald B. Leighton, Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

**BECKER FAMILY BUILDERS CO-
PLAINTIFFS GROUP**

Plaintiff,

v.

**FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
WESTSOUND BANK ; and WSB
FINANCIAL GROUP, INC.,**

Defendant(s).

Case No. 3:09-cv-05477-RBL

NOTICE OF RELATED CASES

TO: The Clerk of the Above-Entitled Court;

TO: The Honorable Ronald B. Leighton, Judge,

**TO: Bruce A. McDermott, of Garvey Schubert Barer, Attorneys for Federal Deposit
Insurance Corporation, as Receiver for Westsound Bank, Defendant, and**

**TO: Thomas A. Sterken, of Keller Rohrback, LLP, attorneys for WSB Financial Group,
Inc., Defendant.**

Notice of Related Cases

- Page 1 -

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1 The Plaintiffs, Becker Family Builders Co-Plaintiffs Group, composed of Jerry Becker
 2 and Mary Ann Becker, individually, and JMB Enterprises; Richard Sanders and Shelly
 3 Sanders, individually and Sanders Enterprises, Inc.; Matt Templeton and Cher Templeton,
 4 individually, and Creative Structures & Design; Joseph Christman and Kristin Christman,
 5 individually, and JKC Properties, LLC; and Robert Burlingame & Burlingame Construction,
 6 acting through their attorney of record, Edward L. Mueller of Mueller & Associates, Inc. P.S.;
 7 **hereby give Notice of Related Cases, as follows:**

8 The above named case, *Becker Family Builders Co-Plaintiffs Group, plaintiffs, v.*
 9 *Federal Deposit Insurance Corporation, as Receiver for Westsound Bank ; and WSB*
 10 *Financial Group, Inc., defendants*, United States District Court , WAWD (Tacoma) Case No.
 11 3:09-cv-05477-RBL, is related to the following two cases listed below:

- 12 1. Federal Deposit Insurance Corporation, as Receiver for Westsound Bank, Plaintiffs,
 13 v. Jerry F. Becker; Mary-Ann Becker; And JFB Properties, LLC, Defendants.
United States District Court, WAWD (Tacoma) Case No. 3:09-cv-05476-RJB;
- 14 2. Westsound Bank, Plaintiff, v. Joseph R. Christman and Kristin E.
 15 Christman, Defendants, Washington State Superior Court,
Kitsap County Case No. 08-2-02723-8.

16 All three cases were originally filed in Washington State Superior Court in
 17 Kitsap County. All three cases were the subject of a motion to consolidate the cases
 18 brought in Kitsap County Superior Court Case No.09-2-00662-o¹ (hereinafter KCSC
 19 09-2-00662-o) by the Becker Family Group Co-Plaintiffs (when they were
 20 represented by their prior attorney, John P. Abrams,)

21 //

22 ¹ This case is now USDC, WAWD (Tacoma) 3:09-cv- 05477-RBL

1
2 while Westsound Bank, was still open and functioning, and prior to any intervention
3 by the Federal Deposit Insurance Corporation² (hereinafter FDIC). The Motion to
4 Consolidate was denied by the Kitsap County Superior Court without prejudice to
5 renew the motion at a later date.³

6 As of this date the FDIC has moved to intervene in and remove to federal court
7 only two of the three cases referenced above as related. In the third case, Westsound
8 Bank, Plaintiff, v. Joseph R. Christman and Kristin E. Christman, Defendants,
9 Washington State Superior Court, Kitsap County Case No. 08-2-02723-8,
10 (hereinafter KCSC No. 08-2-02723-8) apparently the FDIC has not has not
11 intervened, nor assigned legal counsel to the case, nor attempted to remove the case to
12 federal court, although the FDIC apparently claims the right to do so, given the
13 reputed communications between the FDIC staff and Joseph Christman, one of the
14 named defendants in KCSC No. 08-2-02723-8.

15 ² Westsound Bank was named a defendant in the Kitsap County Superior Court Case
16 No. 9-2-00662-0 in which the FDIC became substituted as defendant, and removed that case
17 to federal court in Case No. 3:09-cv-05477-RBL (the above-entitled case in which this
document is filed.) Westsound Bank was the Plaintiff in the Kitsap County Superior Court
Case No. 08-2-2722-0, in which the FDIC became substituted as Plaintiff, and removed that
case to federal court in Case No. 3:09-cv-05476-RJB. Westsound Bank was and still is the
named Plaintiff in Kitsap County Superior Court Case No. 08-2-02723-8 (the third Kitsap
County Superior Court case,) and it has not been removed to federal district court.

18 ³ Whether the FDIC has an obligation (as distinguished from an optional right) to
19 intervene in KCSC No. 08-2-02723-8 is an interesting question. Westsound Bank asserted the
20 right to enforce the loans against the Christmans in that lawsuit. Westsound Bank (and its
parent corporation, WSB Financial Group, Inc.) both still exist as corporations as of October
21 15, 2009, according to the web site of the Corporation Division of the Washington State
22 Secretary of State's Office. If the FDIC fails to intervene in that case as receiver for
Westsound Bank, it would appear that Westsound Bank may have a right to deal with the loan
to the Christmans as the bank's asset. However, assuming that Westsound Bank is
administratively dissolved before the FDIC intervenes in KCSC 08-2-02723-8 (an event that
has not happened but could happen) then the Christman loan may be owned by WSB Financial
Group, Inc. the sole shareholder of Westsound Bank.

1 It is the intent of the Becker Family Builders Co-Plaintiffs Group, plaintiffs in
 2 United States District Court, WAWD (Tacoma) Case No. 09-cv-05477-RBL to move to
 3 consolidate the three cases at an appropriate time in the near future because the
 4 subject matter of the litigation in all three cases (a series of construction loans) and
 5 the related issues of fact and law in all three cases concerning the pattern of failure
 6 and delays of Westsound Bank to fund the construction draws in the construction
 7 loans are similar and interrelated.

8 However, counsel for Plaintiffs in this Case No. 3:09-cv-05477-RBL plans to
 9 consult with legal counsel of record for the FDIC, concerning:

10 (1) the current status of the three cases;

11 (2) some preliminary procedural subjects concerning the possible failure of the
 12 FDIC (the removing party) to remove to federal court what appear to be relevant
 13 documents in the two Kitsap County Superior Court files in which removal has
 14 occurred, so that the federal Court is fully informed as to what was pending, and the
 15 status of state court proceedings before removal; and

16 (3) inquire through FDIC's legal counsel in the two cases that have been
 17 removed to federal district court as to the FDIC's plans, if any, with respect to the
 18 third case, KCSCo8-2-02723-8, still languishing in the Kitsap County Superior Court.

19 Plaintiff's Counsel is aware of the Minute Order dated August 10, 2009 issued
 20 in this case⁴ by the Honorable Karen L. Strombom, Chief Magistrate Judge concerning
 21 (1) initial scheduling dates, (2) the initial Joint Status Report and Discovery Plan, and
 22 (3) other provisions. Plaintiff's Counsel, Edward L. Mueller, did not represent the

⁴ USDC, WAWD (Tacoma) 3:09-cv- 05477-RBL

1 Plaintiffs in this case in KCSC No. 9-2-00662-0 prior to its removal by the FDIC, or
 2 either of the related cases at the time this case was removed by the FDIC. However,
 3 given the fact that the plaintiffs' original complaint was 33 pages long, and appears to
 4 assert claims for damages arising from (1) negligent misrepresentation, (2) violations
 5 of the Washington State unfair business practices consumer protection act. (3) breach
 6 of contract, (4) promissory estoppel, and (5) unjust enrichment indicates that this
 7 case probably is reasonably complex. In addition, it reasonable appears that this
 8 case concerns multiple loans between Westsound Bank and the multiple plaintiffs,
 9 and that the development of the evidence concerning the issues of law and fact
 10 common to the fact patterns alleged in the original complaint will involve extensive
 11 discovery and the testimony of numerous witnesses.

12 In short, at this stage of the proceedings it appears that this case probably will
 13 involve more complexity than the average breach of construction loan contract case.

14 DATED this 21nd day of October, 2009.

15 MUELLER & ASSOCIATES, INC., P.S.

16 

17 Edward L. Mueller, WSBA #264
 Attorney for Becker Family Builders
 Co-Plaintiffs Group

18 Contact Information:
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 22

CERTIFICATE OF SERVICE.

I hereby certify that on October 21, 2009, I caused a copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send e-mail notification of such filing to the following participant at his e-mail address:

Counsel for Federal Deposit Insurance Corporation, Receiver for Westsound Bank, Defendant:

Bruce A. McDermott, attorney at law,
Garvey Schubert Barer
bmcdermott@gsblaw.com, linaish@gsblaw.com

In addition, I certify that on October 21, 2009, I caused to be mailed by first class mail, postage prepaid, a copy of this foregoing document to Counsel of record for WSB Financial Services, Inc., Defendant, whose name and address is as follows:

Thomas A. Sterken, Attorney at Law
Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101;

And faxed a copy of the same document to Thomas A. Sterken at (206) 623-3384.

Dated October 21, 2009.



Edward L. Mueller